CFPB Sues Software Company for Providing Substantial Assistance to Unlawful Credit Repair Businesses

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The Consumer Financial Protection Bureau recently filed a lawsuit in federal district court accusing a California-based software company and its founder, owner, and CEO of providing substantial assistance to illegal credit repair businesses, in violation of the Telemarketing Sales Rule and the Consumer Financial Protection Act of 2010. At first blush, the complaint appears to be limited to the allegations in the complaint. However, the impact of this case and the CFPB's approach to dealing with parties that provide substantial assistance to others who are allegedly violating the law could have far-reaching implications.

In its complaint, the CFPB alleges that the company:

- offers an "all-in-one solution" for people to start and run their own credit repair businesses;
- advertises that "all you need is a computer, a phone and software" to start a credit repair business using its software;
- provides software that includes a customer-relationship management system whereby users can track and organize customer details and activity, including customer names, contact information, and dates they signed up for services and whether the customers are up to date on their payments;
- provides software that allows users to import and review their customers' credit reports and automatically flags negative items on customers' credit reports;
- provides software that contains a database of over 100 template dispute letters that the software will automatically pre-populate with customer information for users to send to consumer reporting agencies and template contracts for users to supply to customers;
- provides training programs on how to start and run a credit repair business, including telemarketing sales scripts, template marketing materials, and template websites;
- lays out steps for disputing negative items on credit reports;
- facilitates networking among users through social media and a chat group as well as through in-person gatherings, including an annual credit repair conference;
- encourages the use of telemarking to sell credit repair services and provides sales scripts for

these calls;

- encourages and advises users to charge customers at enrollment with monthly recurring fees, including an FAQ stating that charging fees up front is how all successful credit repair companies get paid; and
- provides a billing platform that allows users to charge an upfront fee and encourages users to sign up for this platform.

In its complaint, the CFPB claims that the owner:

- wrote a book about how to start and run a credit repair business, which includes template dispute letters, and hosts a podcast where he interviews users of their program. His book and podcast are advertised on the company's website;
- writes blog posts that are posted on the company's website providing advice to prospective and active users about how to convert customers into active paying customers and how and when to collect fees; and
- markets and participates in training programs.

The TSR prohibits credit repair businesses that telemarket their services from requesting or receiving any fee until they have provided the consumer with a consumer report, issued more than six months after their results were achieved, demonstrating that the promised results have been achieved. The TSR further prohibits any person from providing substantial assistance or support to any telemarketer knowing or consciously avoiding knowing that the telemarketer is engaged in any practice that constitutes deceptive or abusive conduct.

In its complaint, the CFPB alleges that the software company and its owner actively assisted credit repair companies in violating the TSR by encouraging and facilitating the companies to use telemarketing to contact consumers and to charge unlawful advance fees.

The CFPB further alleges that the company and its owner have known or have consciously avoided knowing that the software's users were telemarketing and charging advance fees in violation of the TSR. The CFPB supports this claim by stating that the company and its owner had knowledge through social media interaction, in-person network gatherings, interviews of users, access to the users' fee structure information, and review of the users' business models.

Finally, the CFPB alleges that, through the company's and the owner's master class and in their training materials, they help users build websites and provide templates for those websites. These websites routinely include information regarding the fee structure, including monthly fees and enrollment fees, all in violation of the TSR.

As to the company's owner, the CFPB claims that he has known or been recklessly indifferent to the fact that the company has been providing substantial assistance or support to its users in violation of the TSR.

The CFPA provides that it is unlawful for a covered person or service provider to offer or provide to a consumer a financial product or service not in conformity with federal consumer financial law. The CFPB claims that users of the company software are "covered persons" that provide a consumer financial service for use by consumers for personal, family, or household purposes and that the company and its owner are "service providers" because they provide a material service to these users by participating in designing, operating, or maintaining the users' provision of credit repair services. Therefore, the CFPB claims that the company and its owner violated the CFPA by providing a service not in conformity with the TSR, a federal consumer financial law.

The CFPB is seeking injunctive relief, monetary relief (including the refund of monies paid, restitution, disgorgement or compensation for unjust enrichment, and payment of damages), civil money penalties, costs, and other relief against the company and its owner.

What really turned my head about this complaint is that the CFPB chose to pursue a software company under a "substantial assistance" theory for violations of these laws rather than proceeding against the end-users. At least for now. As the CFPB's complaint notes, the software company is not a typical software company, which usually provides just the platform for the user. In this case, the CFPB claims that the company provides substantial resources to its users and that both the company and its owner actively trained and encouraged users to violate these consumer protection laws. As the acting director stated, "The CFPB will not tolerate companies facilitating and profiting from other companies' violations of federal consumer protection laws."

Only time will tell if the CFPB will continue to use its "substantial assistance" authority against other companies and individuals that provide advice, templates, and trainings to other parties. It's a great time to read through this complaint and then talk to your friendly lawyer!

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